

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 57th LEGISLATURE - REGULAR SESSION COMMITTEE ON FEDERAL RELATIONS, ENERGY, AND TELECOMMUNICATIONS

Call to Order: By **VICE CHAIRMAN DOUGLAS MOOD**, on March 6, 2001
at 3:00 P.M., in Room 137 Capitol.

ROLL CALL

Members Present:

Rep. Tom Dell, Vice Chairman (D)
Rep. Douglas Mood, Vice Chairman (R)
Rep. Dee Brown (R)
Rep. Roy Brown (R)
Rep. Gary Forrester (D)
Rep. Carol C. Juneau (D)
Rep. Gary Matthews (D)
Rep. Joe McKenney (R)
Rep. Alan Olson (R)
Rep. Trudi Schmidt (D)
Rep. Bob Story (R)

Members Excused: Rep. Aubyn A. Curtiss, Chairman (R)

Members Absent: None.

Staff Present: Stacey Leitgeb, Committee Secretary
Stephen Maly, Legislative Branch

Please Note: These are summary minutes. Testimony and
discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: SB 398, 3/1/2001; SB 272,
3/1/2001
Executive Action: SB 234; SB 269; SB 398

HEARING ON SB 398

Sponsor: SENATOR KEN MILLER, SD 11

Proponents: Pat Clevenger, Smurfit-Stone Container Corporation
Tom Daubert, Ash Grove Cement Company
Ellen Engsted, Montana Wood Products Association
Gail Abercrombie, Montana Petroleum Association
Don Allen, Western Environmental Trade Association
Tom Ebbery, Governor's Council of Electric Utility
Prices
Holly Franz, Advanced Silicon Materials Incorporated

Opponents: Debbie Smith, Natural Resources Defense Council,
Renewable Northwest Project
Patrick Judge, Montana Environmental Information
Center

Informational Witnesses: Don Vidrine, DEQ

Opening Statement by Sponsor:

SENATOR KEN MILLER, SD 11, introduced the bill. This allows that, after the department has received an application to put in a temporary power generator, they be allowed to do so until the full permit is granted. There has been a couple of instances already in which those permits have been granted in a time frame that has been reasonably short. This doesn't allow any violations of the air and water pollution standards that are now in place.

Proponents' Testimony:

Pat Clevenger, Smurfit-Stone Container Corporation, submitted written testimony. **EXHIBIT**(feh51a01)

Tom Daubert, Ash Grove Cement Company, said that they are already generating their own on-site energy. They have already gone through the existing permitting process. They found how easy it is to find yourself suddenly without an energy contract and without the ability to purchase energy on the market that you can afford. This bill would allow those people to continue operating without interruption and without the need for a temporary shutdown.

Ellen Engsted, Montana Wood Products Association, said that this bill provides for temporary power generation with a total

capacity of 10 megawatts. This could be used in an emergency situation as a steady source of power to keep the equipment running.

Gail Abercrombie, Montana Petroleum Association, said that two members of her organization have applied and are currently on their way to get those temporary power generations. This is a good piece of legislation for the state for those emergency situations that do arise, so that we can keep the power here.

Don Allen, Western Environmental Trade Association, said that the thing to remember about this bill is that it cuts across the board. It is not just one industry, it will help a lot of them. This is a part of the puzzle that should be there as a tool when necessary.

Tom Ebbery, Governor's Council of Electric Utility Prices, said that they are having severe supply problems in various areas. Last week the council voted to move forward with an idea on how portable generation might become a short-term solution as part of SENATOR MILLER's bill. They urge the committee to support this bill and some possible amendments.

Holly Franz, Advanced Silicon Materials Incorporated, supports this bill, even though they have a good contract until the end of 2003. They do have two temporary generators on site right now that they keep as backup. They are permitted through DEQ for emergency use. ASMI has generators on their plant now that could be available to add power to the grid.

Opponents' Testimony:

Debbie Smith, Natural Resources Defense Council, Renewable Northwest Project, said that this is an important issue. NRDC has extensive experience in Montana's air pollution standards. They feel that the bill still violates federal law and if you pass this there will be a chance that Montana's authority to administer the federal law could be put in danger. The reason is that what you are doing is exempting, for up to two years, a permit for something that requires a permit. The federal Clean Air Act and our state Air Quality Act require a permit for these things to operate. The state laws have been included in what is called the State Implementation Plan (SIP) under the federal Clean Air Act. The SIP is an independent, federally enforceable law by both EPA and any other entity that wants to bring a citizen suit provision to enforce the provisions of the SIP. Exempting these generators is not consistent with the existing SIP. In addition to being dirty, it is also very expensive.

Patrick Judge, Montana Environmental Information Center, said that they were an opponent in the Senate, but they want to go on record as being in support of the amendments that were made by the Senate on the floor. As he understands it, the primary intent here is to try to provide the large industrial customers that are suffering right now with some ability to power their operations. The primary intent was not to turn them into commercial power generators to sell their power out on the market. He feels that the public does have the expectation that industries are regulated as point source emitters. He pointed out that 10 megawatts is a significant amount of power.

Informational Testimony:

Don Vidrine, DEQ, is available for questions.

Questions from Committee Members and Responses:

REPRESENTATIVE ROY BROWN asked Mr. Vidrine to comment on the idea that this violates federal law. **Mr. Vidrine** said that they have had conversations with representatives of region eight that disagree that certain facilities, such as these, would be in conformance with what is considered to be prevention of significant deterioration requirements, additional rules that apply to permanent facilities. Their position is that these temporary sources are not subject to the PSC requirements and therefore would not be in contradiction to federal law.

REP. ROY BROWN referred to page 4, line 3. Would it be a problem to say for the applicants use only? **SENATOR MILLER** said that it already does. **REP. BROWN** clarified that the applicant could not generate this power and sell it to a third party for their use. **SENATOR MILLER** said that is correct.

REPRESENTATIVE BOB STORY clarified that this all deals with the process that you have to go through to get a permanent permit. If a person was to put in one of these generating units for use as a permanent unit, is there a prohibition against them metering that power and putting it back into the grid? **SENATOR MILLER** deferred to **Dave Clint, DEQ**. He stated that if a facility were to come in and go through all of the requirements that a permanent facility would be required to meet, they would not place any restrictions on whether or not they could sell power. **REP. STORY** asked what things are required to get that permit. **Mr. Clint** said that applications, public notices, extensive control equipment, analysis to determine what the appropriate type of control for that piece of equipment, if it is permanent

there are additional requirements, et cetera, would be required.

REP. STORY asked if the process is so site specific that a given generating unit might qualify in one location for a permit and not in another. **Mr. Clint** said that could be true. **REP. STORY** referred to line 2 of the bill that talks about ten megawatts or less. In the regular permitting process, is there a minimum size of generator that has to be before it can be permitted.

Mr. Clint said that the criteria is that a facility has 25 tons per year of any regulated pollutant emitted from that facility on a potential basis. Ten megawatts is considerably higher than that. **REP. STORY** said that as this bill is drafted, would this require a small ten kilowatt generator to be permitted?

Mr. Clint said that, as he understands it, if that unit didn't trigger the permitting requirements, this statute would not bring it into the realm of permitting. **REP. STORY** asked for a definition of a permitted facility. **Mr. Clint** didn't know that it is defined. The way he reads it is that it is a facility that has an air quality permit from the state of Montana.

REPRESENTATIVE TRUDI SCHMIDT asked about the term temporary.

Mr. Divrine said that the final section says that the permit expires no later than two years. If a facility wants to use their generator for a longer period of time they would need to go through the normal permitting process that would apply to permanent generators. **REP. SCHMIDT** asked about the term "dirty power." **Mr. Clint** replied he wasn't familiar with that term.

REP. SCHMIDT asked about the term "dirty power." **Ms. Smith** said that as far as price goes, it has varies between \$100 to \$140 per megawatt hour. By comparison, the buy-back price that MPC negotiated is \$22.50 per megawatt hour. These generators are based at more than four times the amount of cost-based power. By dirty, what she meant was that these are very polluting facilities. The temporary generators that are being used are often diesel powered. Diesel generators are huge emitters of nitrogen oxide, carbon dioxide, and more.

REPRESENTATIVE GARY FORRESTER asked how many generators the Exxon power plant put in. **Mr. Ebbery** replied that his understanding was that there are two ten megawatt generators that would be installed at the Exxon refinery. Those are to be fueled by natural gas and diesel. **REP. FORRESTER** asked how this bill help Exxon. **Mr. Esbery** said that this bill will not help Exxon. This bill is too small to help for the generators that they need.

REP. FORRESTER asked how many generators Conoco is going to install at their plant. **Ms. Abercrombie** said that it is a total

of 19 megawatts. **REP. FORRESTER** asked how this bill will help Conoco. **Ms. Abercrombie** said that two refineries are currently in the process of getting their generators in place. There is another refinery that is looking at power generation. This will help future facilities.

REP. FORRESTER clarified that Conoco will run diesel-powered generators. **Paul Gould, Conoco**, said that was correct.

REP. FORRESTER asked how much pollution is allowed within the current permit. **Mr. Gould** replied that they will run the lowest sulfur diesel fuel that they have available in the refinery. They will not exceed the existing permit levels.

REP. MOOD asked how big the generators at Smurfit-Stone are.

Mr. Clevenger said that these generators are new Caterpillar units and they are units that are used throughout the west. They are diesel engines, but there are natural gas units that are available. **REP. MOOD** asked how you get these units.

Mr. Clevenger said that they lease them through a local dealer.

REP. MOOD asked, when you lease the machines, do they provide you with emission statistics? **Mr. Clevenger** said that they do and they had submitted that information to the DEQ in the permit process.

REP. MOOD clarified that this bill would extend the temporary permit for two years. **SENATOR MILLER** said that was correct.

REP. MOOD asked why he would choose two years. **SENATOR MILLER** said that was in case there were problems. Should there be appeals or other problems, it could take quite a bit longer.

REP. FORRESTER asked how they would market the power back to the grid. **SENATOR MILLER** said that this bill would not allow that.

REP. FORRESTER clarified that this bill, without an amendment, would not allow any power to be put back into the grid. **SENATOR MILLER** said that was correct.

REP. SCHMIDT clarified that the permitting process wasn't built into the two years that they would be using the generators.

SENATOR MILLER said that the permitting process would be taking place within that two years.

Closing by Sponsor:

SENATOR MILLER would be open to amendments allowing power to go back into the grid, but he would prefer that the bill be left as it is.

HEARING ON SB 272

Sponsor: SENATOR KEN TOOLE, SD 27

Proponents: Deb Martin-Young, MPC
Debbie Smith, NRDC, RNP
Patrick Judge, Montana Environmental Information
Center
Greg Groepper, Energy Share
Patty Keebler, AFL-CIO
Matthew Leow, Montana Public Interest Research Group
Steve Yeakel, HRDC Directors' Association
Betty Whiting, Montana Association of Churches

Opponents: Matt Brenard, PSC, district 4

Opening Statement by Sponsor:

SENATOR KEN TOOLE, SD 27, said that this bill is revising the Universal Systems Benefit (USB) charge and extending the sunset. For a number of years he worked with the MPC's Least Cost Planning Advisory Committee. The role of that committee was to advise MPC on running conservation programs, renewable energy programs, as well as low-income assistance programs. There is broad recognition that it is very difficult to fund these types of programs and allow them to operate in a fully competitive market. There was broad recognition that there needed to be a provision for these programs. That provision became the USB charges. We need to encourage conservation and renewable resources and provide for them. This bill has been heavily amended and the amendments are an improvement to the bill.

Proponents' Testimony:

Deb Martin-Young, MPC, said that since the USB charge went into effect for MPC, their customers have funded nearly \$16.5 million in public purpose benefits. As a result of this funding, new programs and new efforts have been committed to low income activities, new renewable resource programs have been implemented, and more. Thousands of customers have been helped by these services. She gave some examples of how the USB money is used. They support the extension of the USB program and the new level of funding.

Debbie Smith, NRDC, RNP, said that this bill establishes the current USB funding level of 2.4% of annual utility revenues to be an annual funding level. Currently, rural electric co-ops already view the statute as allowing them to exceed the 2.4%

level and they have done that. MPC takes a more strict reading of the law and reads that it can't exceed the funding level at 2.4% without the express authorization that this bill provides. They think that this just grants the same flexibility to the industrial utilities that the rural electric co-ops already believe that they have.

Patrick Judge, Montana Environmental Information Center, said that they support the extension of the USB charges. The programs that it supports help to insulate customers from the volatile and high market prices that we have been seeing. This is a bill that allows the legislature to take a leadership role. He explained some of the USB programs such as conservation. He stated that conservation is far more environmentally preferable than traditional types of energy generation.

Greg Groepper, Energy Share, said that there are over 78,000 families in Montana that are poverty level. This program is desperately needed to help those people continue to deal with the high cost of energy. This committee has a chance to make sure that these people are taken care of.

Patty Keebler, AFL-CIO, said that they support the ability for folks to help low income people pay power bills. They encourage conservation and alternative energy, as well as new generation in Montana.

Matthew Leow, Montana Public Interest Research Group, noted that the Transition Advisory Committee had advised the extension of the USBC. Renewable energy sources require more of an investment than conservation programs, but there is a very great long-term pay off. Utilizing renewable energy benefits all Montanans. It is important that our energy policy address both problems and needs both in the short term and in the long term. USBC is an important part of our energy policy. USBC is a small charge, but it has great benefits.

Steve Yeakel, HRDC Directors' Association, said that we are in a time of transition and great change. This is one of the easiest opportunities that the committee has to send a strong signal to all Montanans, especially the low income Montanans, that you are concerned with the future of energy.

Betty Whiting, Montana Association of Churches, supports this bill for all the previous reasons, but especially for the low income people. We need to learn to love our neighbors and help them when they are in need. The renewable energy supports caring for creation in a clean way.

Opponents' Testimony:

Matt Brenard, PSC, district 4, said that the PSC is not opposed to the USB and the things that they are trying to do with those funds. However, this bill causes concern because of the minimum of 2.4%. The concept of minimum provides some ambiguity to their duties to establish the rates. The PSC is not really a taxing entity and this language would put the PSC in a position where they would begin to levy taxes without any kind of real instruction as to what they are doing. They see this as very ambiguous and would create disparity in the system. They would like clear direction as to what percentage you want and how you want it assessed.

Questions from Committee Members and Responses:

REPRESENTATIVE BOB STORY clarified that, if a utility were to raise their USBC to a higher percentage, the law requires the PSC to let them pass that through in the rates. **Mr. Brenard** said that is the way he sees it in his experience. **REP. STORY** asked if it was right that he thinks this is a policy decision. **Mr. Brenard** said that was correct.

REPRESENTATIVE DOUG MOOD clarified, if MPC sells its transmission facilities, they will no longer be involved with USB. **Ms. Martin-Young** said that the USBC is assessed to the distribution customers of the utility company. MPC, when it is sold to Northwestern, will still be the distribution utility and will still have the responsibility, under law, to collect the USB charge.

Closing by Sponsor:

SENATOR TOOLE said that within the USB charge there are two things going on. One is social welfare; the other is energy acquisition, such as conservation and renewables. In his understanding, the PSC would be able to disallow conservation or renewable investments that were not prudently made. Within the concept of mixing these strategies, the acquisition for annual funding for low income funding energy and weatherization assistance is established at 17% of annual USB. This is something that the PSC can look at. He feels that it is important to understand that you have different things happening with USB. As energy prices go up, more conservation becomes available on the system. We don't want to miss opportunities.

EXECUTIVE ACTION ON SB 234

Motion: REP. STORY moved SB 234 BE CONCURRED IN.

Discussion:

REP. DEE BROWN asked for clarification. REP. STORY said that the purpose of the whole bill is to put in statute some structure of what the duties of these people are and indemnify them individually from law suit. REP. DEE BROWN was concerned where the bill started. Mr. Weins said that this has no correlation to the situation with the coal company customers in southeast Montana.

REP. MOOD said that the language duplicates some other statutory language.

REP. DEE BROWN thought that co-ops were licensed under a national thing, rather than a state thing. Mr. Weins referred to the Rural Electrification Act, all that did is authorize co-ops to receive loan assistance from the federal government.

REP. MOOD clarified that co-ops are organized under state law. Mr. Weins said that was correct. REP. MOOD said that his understanding is that this bill is protecting the directors of the co-op from being sued personally. Mr. Weins said that is exactly what it does. REP. MOOD asked why they don't have that protection currently. Mr. Weins said that is because the enabling law was adopted in 1939, at a time when they weren't facing competitive situations. The reason this bill is needed now is that they are facing critical decisions as they move into the competitive industry. We need to update the enabling law to reflect those changes in the industry.

REP. JUNEAU asked if liable, as in this bill, is defined anywhere else in statute. Mr. Weins said that there is a definition in the law about what constitutes wilful misconduct. This bill simply says that you are entitled to rely on people who should be reliable.

REP. DEE BROWN said that she is surprised that it took them 50 years to come to the legislature for this.

REP. STORY pointed out that, until recently, there wasn't a lot of liability or problems in the industry.

REP. ROY BROWN called for the question.

Vote: Motion **carried unanimously.**

EXECUTIVE ACTION ON SB 269

Motion: REP. MATTHEWS moved that SB 269 BE CONCURRED IN.

Discussion:

REP. MATTHEWS said that MDU customers are in a different grid system. In 1997, MDU got an exemption so that they wouldn't have to deregulate in 2002, 2004. This bill says that MDU customers in eastern Montana will not have to restructure until North Dakota does.

REP. STORY asked if this bill actually says that if North Dakota deregulates that then they will have to. The response was given that the bill ties MDU's deregulation in Montana to North Dakota.

REP. CURTISS thinks that this is a good bill and it is no more than fair.

Vote: Motion **carried unanimously.**

EXECUTIVE ACTION ON SB 398

Motion: REP. OLSON moved that SB 398 BE CONCURRED IN.

Discussion:

REP. FORRESTER asked about an amendment that would allow, when the generators are running, for some of the power to be sold on the grid and therefore decrease some of the cost of generating.

REP. OLSON said that the bill gives two years to get the permit, but once they are permitted they would be able to sell that power on the grid.

Mr. Maly said that the Advisory Council is not clear as to the legal authority. This bill doesn't give them the legal authority to sell power back to the grid, because when they do that they become a public utility subject to regulation from the PSC. His sense of the amendment is that it would make it a little fuzzy. He is quite certain that there is no avenue for this entity under this bill to resell power to anybody.

REP. ROY BROWN said that the sponsor had stated that on line 3, page 4, it says that they can not sell it off of the facility site.

REP. OLSON said that Conoco and Exxon aren't included in this because the exceeded the ten megawatt limit. This bill wouldn't cover them.

REP. FORRESTER said that if you talk to Conoco and Exxon, these generators will be used for peak power time. The generators aren't going to be running full time.

REP. CURTISS wondered what kind of entity a permitted facility would be. **Mr. Maly** said that they are, generally speaking, large industrial plants that seek permits.

REP. MOOD thinks that he bill is designed to allow large industrials to respond to the unpredictable increases in electricity rates with an alternative.

REP. DEE BROWN called for the question.

Vote: Motion **carried 11-1 with Juneau voting no.**

HOUSE COMMITTEE ON FEDERAL RELATIONS, ENERGY, AND
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ADJOURNMENT

Adjournment: 5:04 P.M.

REP. DOUG MOOD, Chairman

ROBYN LUND, Secretary

DM/RL

EXHIBIT (feh51aad)